

SEP 19 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

ROLAND I. KEHANO, SR.,

Plaintiff - Appellant,

v.

STATE OF HAWAII; et al.,

Defendants - Appellees.

No. 05-16908

D.C. No. CV-05-02475-SMM

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Arizona
Stephen M. McNamee, District Judge, Presiding

Submitted September 11, 2006 ^{**}

Before: PREGERSON, T.G. NELSON, and GRABER, Circuit Judges.

Ronald I. Kehano, Sr., a Mississippi state prisoner formerly incarcerated in Hawaii and Arizona, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action. We have jurisdiction pursuant to 28 U.S.C. § 1291.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

We review de novo, *Osborne v. Dist. Atty's Office for the Third Judicial Dist.*, 423 F.3d 1050, 1052 (9th Cir. 2005) (dismissal pursuant to *Heck v. Humphrey*, 512 U.S. 477 (1994)); *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000) (dismissal under screening provisions of 28 U.S.C. § 1915A). We affirm.

Before transferring the remaining claim in this action to the District of Arizona, the United States District Court for the District of Hawaii properly dismissed Kehano's first two claims in case no. 05-00473 HG-LEK, because success on these claims would necessarily implicate the validity of Kehano's conviction, and accordingly his only remedy is a writ of habeas corpus. *See Heck*, 512 U.S. at 486-87.

The United States District Court for the District of Arizona properly dismissed the remaining claim as duplicative of pending claims brought in case no. CV-04-935-PHX-SMM (LOA) (D. Ariz.). *See* 28 U.S.C. § 1915A(b)(1) (allowing district courts to dismiss prisoner actions that are frivolous); *see also Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995) (no abuse of discretion in dismissing action as frivolous under 28 U.S.C. § 1915 where complaint "merely repeats pending or previously litigated claims").

We find Kehano's remaining contentions unpersuasive.

Kehano's "Motion for Special Assumpsit," filed March 6, 2006 is denied.

AFFIRMED.